

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
HEINS RODRIGUEZ, : 16-cv-05861-NG-RER
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Brooklyn, New York
 :
CITY OF NEW YORK, et al., : March 22, 2018
Defendants :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1 THE COURT: This is the Telephone Conference in
2 the case of Rodriguez v. City of New York, et al., docket
3 number 16-cv-5861.

4 Counsel for plaintiff?

5 MS. FETT: Good morning, your Honor.

6 Baree Fett for plaintiff, Heins Rodriguez.

7 THE COURT: Counsel for the defendants?

8 MS. BARDAUSKIS: And good morning, your Honor.

9 Elizabeth Bardauskis, counsel for defendants
10 Zheng, Chen and Starrantino, as well as the City of New
11 York, of course.

12 THE COURT: Okay. Let me just look at your
13 last submission. Okay. You're done with discovery,
14 right?

15 MS. FETT: We are not, your Honor. We're close
16 but I apologize on plaintiff's part. We were -- I was
17 hoping optimistically to try to get these depositions
18 done in the middle of my trial schedule. And that didn't
19 happen. I had reached out to defense counsel early on to
20 let her know that I just didn't think that I could do
21 that.

22 And she was, you know, very kind and we have
23 been trying to go back and forth and I think now, this
24 month, I think defense counsel has had some issues with
25 her scheduling, so we haven't gotten it done. However,

Proceedings

1 we have set out specific dates in April because there's
2 not that much left. I think it's three defendants and
3 the plaintiff.

4 So, you know, we have agreed in weeks in April,
5 I think starting on -- let me just look, I apologize --
6 yeah, so the week of April 9th for the plaintiff, I
7 believe the week of April 12th for Starrantino, the week
8 -- I guess that same week, April 12th for Officer Chen
9 and then we're just -- I'm just waiting to hear from
10 defense counsel on Office Zheng.

11 But we're shooting for getting all of that done
12 in April. I think defense counsel -- excuse me, Ms.
13 Bardauskis for speaking for you --

14 MS. BARDAUSKIS: That's fine.

15 MS. FETT: -- in terms of your maternity leave,
16 there might -- I don't know if there's an issue with
17 that.

18 MS. BARDAUSKIS: Well, not necessarily and I
19 appreciate that. Yes, your Honor. My maternity leave at
20 this point, obviously it's subject to change based on a
21 number of things beyond my control but my due date is
22 April 24th. It appears based on without getting too
23 personal, it appears on based on representations from my
24 doctor that I will likely be out sometime between April
25 17th -- sometime between -- the window of time between

Proceedings

1 the 17th and the 24th is when I will likely commence my
2 maternity leave. So that's --

3 THE COURT: Well, you're going to --

4 MS. BARDAUSKIS: But that's --

5 THE COURT: So then that's going to be a
6 problem because you don't even have a date for one of the
7 officer's depositions and, you know, you would probably
8 be out by then.

9 MS. BARDAUSKIS: Well, your Honor, I have
10 represented and conferring with counsel, we've talked
11 about dates -- again, and I just only recently learned
12 this as of yesterday, I had a doctor's appointment but
13 that being said, we had talked about, you know, dates in
14 the week of, I guess, April 9th as counsel had stated
15 earlier. It is going to be tight. So that being said, I
16 don't know if there's anyway -- and I don't want to use,
17 you know, obviously I'm not using pregnancy as an excuse
18 or anything, it's just I don't know whether --

19 THE COURT: No, you're not using pregnancy as
20 an excuse. I'm not saying that.

21 MS. BARDAUSKIS: Okay. I don't like to play
22 the pregnancy card but I am not sure whether we can add a
23 little cushion to that -- you know, to the deadline so
24 that this case can be transferred, you know, to another
25 ACC and that there's a little room for, you know, the

Proceedings

1 remaining depositions.

2 Counsel is absolutely correct. There really --
3 this is not like a complex litigation wherein there's a
4 ton of parties. There's the plaintiff and then the three
5 named defendants and I don't think we anticipate any sort
6 of expert discovery in the way of deposition.

7 THE COURT: Well --

8 MS. BARDAUSKIS: But that's sort of our stand
9 in our end.

10 THE COURT: So how long are you going to be
11 out?

12 MS. BARDAUSKIS: Indefinitely. It looks like
13 at least six months.

14 THE COURT: All right.

15 MS. BARDAUSKIS: Which is, you know --

16 THE COURT: So have you started the
17 reassignment process because regardless of whether you're
18 here for the depositions, someone is going to have to
19 take over the case.

20 MS. BARDAUSKIS: That is correct, your Honor.
21 Technically speaking, I mean, as far as internally within
22 our office, I've started the process of addressing the
23 transfer memo but has not been formally reassigned. My
24 understanding is that that will happen some time in
25 April. You know, I can sort of press for that but none

Proceedings

1 of my cases have been officially reassigned.

2 And to the extent that I can get it reassigned
3 earlier, if that's to the benefit of the case and you
4 know, if that's what the Court would prefer, then I can
5 certainly --

6 THE COURT: I've got to say --

7 MS. BARDAUSKIS: -- address that.

8 THE COURT: -- why didn't you let me know this
9 last week? You told me -- you asked for the extension
10 last week for one -- you asked for only a one-week
11 extension I think it was.

12 MS. FETT: Oh, no, I apologize, your Honor.
13 That could have been in the writing of it. We actually
14 -- defense counsel and I have been debating between a
15 thirty-day extension, a forty-five day extension. We
16 might have both mentioned a week and I apologize if it
17 came across that way.

18 We actually just were hoping to speak with you
19 today to try to figure out a reasonable extension and
20 what the Court would approve of and then it sounds like
21 defense counsel just heard yesterday about, of course
22 (indiscernible) --

23 THE COURT: Give me a second.

24 MS. FETT: -- pregnant.

25 THE COURT: Give me a second.

Proceedings

1 MS. FETT: Yes.

2 THE COURT: Oh, to be -- all right, fine.

3 Well --

4 MS. FETT: I apologize if that wasn't clear.

5 MS. BARDAUSKIS: And from my perspective, your
6 Honor, I mean my time line has changed -- it hasn't
7 changed drastically. I mean, as I've represented to
8 counsel all along, my due date has remained the same. So
9 it's no being possibly pushed up a week but it's -- you
10 know, I wish I had more certainty on -- you know, just
11 for my own sake as well but I don't --

12 MS. FETT: But I do think -- I apologize -- I
13 do think, your Honor, I think as far as what you were
14 suggesting, I mean I think if an ACC takes over and we
15 can just hit the ground running, it's not a complex
16 case --

17 THE COURT: Well, that is not going to happen.
18 That's not going to happen because I have yet to see it
19 happen in a transferred case. It's always I need more
20 time. I need more time. The case is recently
21 transferred.

22 MS. BARDAUSKIS: That's unfortunately true,
23 your Honor, which is what I --

24 THE COURT: It's the way it happens.

25 MS. BARDAUSKIS: -- (indiscernible).

Proceedings

1 THE COURT: It's the way it happens. So look,
2 you need to get the case reassigned by the end of next
3 week. You need to get off of it because you're not going
4 to be able to deal with it for six months and we're not
5 waiting that long.

6 MS. BARDAUSKIS: Yes, your Honor.

7 THE COURT: So the sooner you have -- and I'm
8 not saying -- it's not you, you know, it's just the
9 practical reality.

10 MS. BARDAUSKIS: Yes, your Honor.

11 THE COURT: So finish the reassignment memo.
12 Tell Pat Miller or whoever it is, that --

13 MS. BARDAUSKIS: Uh-hum.

14 THE COURT: -- is responsible for reassigning
15 the case, it needs to be reassigned by the end of next
16 week.

17 MS. BARDAUSKIS: Yes, your Honor.

18 THE COURT: That person needs to step up,
19 get --

20 MS. BARDAUSKIS: Acquainted, yes.

21 THE COURT: -- acquainted and defend the
22 depositions. I will give you until the end of April to
23 do your depositions.

24 MS. BARDAUSKIS: Yes, your Honor.

25 THE COURT: Actually, I will give you until --

Proceedings

1 I will cut a little bit of slack because I know you guys
2 have a lot going on, I will give you until May 18th to
3 complete all discovery; depositions, post-deposition
4 document requests, whatever.

5 MS. BARDAUSKIS: Yes.

6 THE COURT: This is not an opportunity for the
7 new ACC to say oh, I would have done this differently.
8 Ms. Bardauskis didn't ask for X, Y and Z, I want that.

9 MS. BARDAUSKIS: Yes, your Honor. I understand
10 completely.

11 THE COURT: It's whatever is remaining we'll
12 get done by May 18th and that's what we're going to do.
13 What is the likely path after the discovery is completed?
14 Do you have a motion --

15 MS. FETT: (Indiscernible) plaintiff --

16 THE COURT: -- do you have a motion in line or
17 what?

18 MS. BARDAUSKIS: Go ahead, Baree, sorry.

19 MS. FETT: No, no, I was just going to say
20 obviously plaintiff would want to go to trial. I don't
21 know if defendants anticipate a motion.

22 MS. BARDAUSKIS: I think, your Honor, as has
23 probably been expressed at an earlier juncture at one of
24 these earlier conferences, I think it's going to be
25 difficult to submit a fully dispositive motion if we're

Proceedings

1 dealing with --

2 THE COURT: (Indiscernible) --

3 MS. BARDAUSKIS: -- an excessive force claim.

4 THE COURT: Yep. You're probably right.

5 MS. BARDAUSKIS: Yes.

6 THE COURT: Okay. So May 18th, to complete
7 discovery. The joint pretrial order is due June 29th and
8 we will have -- actually, the joint pretrial order is due
9 June 28th and we'll have a telephone conference on June
10 29th at 10 a.m. to be initiated by Ms. Fett.

11 MS. FETT: Understood, your Honor. Your Honor,
12 if I may just briefly, we've talked about this at the
13 last conference and I just want to confirm it. I don't
14 know if you remember we were talking about experts and
15 expert reports and the Court had said why do you want to
16 spend so much money on this case, you know, let's try to
17 settle it. And then so, you know, it had been decided
18 instead of having a separate expert discovery schedule,
19 we were just going to be trying to do it all by March
20 19th.

21 And so I have -- I m still going forward on
22 that understanding and I just want to make sure that
23 that's the Court and defense counsel's understanding that
24 by May 18th, everything has to be completed including if
25 there's going to be expert discovery.

Proceedings

1 MS. BARDAUSKIS: That's my understanding,
2 counsel.

3 THE COURT: Yeah, but do you need dates then
4 for -- to submit an expert report?

5 MS. FETT: I guess that may make sense. I mean
6 with Ms. Bardauskis, I think we have been working well
7 together and we could have just probably worked it out
8 but with a new attorney, I don't want to complicate
9 things. So maybe we should have interim dates.

10 MS. BARDAUSKIS: I would tend to agree because
11 I think at minimum, you know, to the extent that we
12 would only retain an expert for the purpose of, you know,
13 serving as a rebuttal expert. So we would need some sort
14 of heads-up, I guess for lack of a better word as to, you
15 know, when plaintiff was going to make that disclosure,
16 so then we could have enough -- you know, a sufficient
17 amount of time to then go ahead and retain the expert,
18 have the expert review the documents and draft the
19 report.

20 THE COURT: April 13th for any expert
21 disclosure from the plaintiff.

22 MS. FETT: Thank you, your Honor.

23 THE COURT: And that will give the defendant
24 until May 18th. And since you're going to submit a joint
25 pretrial order subsequent to that, I guess you could --

Proceedings

1 if you wished to take those expert's depositions, you
2 could do that in the period of time from May 18th through
3 the date when you have to submit the joint pretrial
4 order.

5 MS. FETT: Okay. That's great. Thank you,
6 your Honor.

7 MS. BARDAUSKIS: Thank you, your Honor.

8 THE COURT: Anything else?

9 MS. FETT: That's all for plaintiffs.

10 MS. BARDAUSKIS: Not at this time, your Honor.
11 Thank you.

12 THE COURT: Have you had any follow-up
13 settlement discussions?

14 MS. BARDAUSKIS: Not at this point, your Honor.
15 I am certainly trying to pursue it within my office, you
16 know, as far as revisiting but thus far, we haven't --
17 there hasn't really been a change in the posture because
18 we don't have any additional information that's really
19 changing our valuation of it.

20 But that being said, I mean, my office is well
21 aware of the fact that with an excessive force claim,
22 it's going to be heard to move. So we're certainly
23 contemplating, you know, the various risks that are
24 inherent with the trial and so forth and that's going to
25 be the factor and the valuation overall.

Proceedings

1 THE COURT: All right. Well, if you need my
2 help you will let me know.

3 MS. BARDAUSKIS: Yes, your Honor. Thank you.

4 THE COURT: Okay.

5 MS. FETT: Thank you, your Honor.

6 THE COURT: Thank you.

7 MS. FETT: Goodbye.

8 MS. BARDAUSKIS: Bye-bye.

9 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 22nd day of April, 2018.


Linda Ferrara

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